

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALISA BALLARD DUNLAP,)	CASE NO. 5:18 CV 2275
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
vs.)	<u>OPINION AND ORDER</u>
)	
COMMISSIONER OF SOC. SECURITY,)	
)	
Defendant.)	

On October 1, 2018, Pro Se Plaintiff Alisa Ballard Dunlap filed a complaint challenging the final decision of the Commissioner of Social Security, denying her application for benefits under the Social Security Act, 42 U.S.C. §§ 423 *et seq.* Doc #: 1. The case was automatically referred to Magistrate Judge Thomas M. Parker for preparation of a Report and Recommended Decision. On October 1, 2018 and again on December 17, 2018, Dunlap filed motions requesting the appointment of counsel to represent her due to her health problems.

Doc ##: 3 and 13.

On May 24, 2019, Magistrate Judge Parker issued a Report and Recommendation (“R&R”), recommending that the Court decline to exercise its jurisdiction to appoint counsel to represent Dunlap because she failed to show exceptional circumstances justifying the appointment of counsel and recommended the Court deny the motions. **Doc #: 14.** On the same day, Magistrate Judge Parker also issued an Order directing Dunlap to file her merits brief on or before June 28, 2019 or face dismissal for lack of prosecution without further notice. Doc #: 15.

Upon review of the R&R, the undersigned remembered having jurisdiction over a previous, related Social Security appeal filed by Dunlap, who had applied for benefits dating back to 2006, and was found by the Administrative Law Judge (“ALJ”) (and ultimately the Commissioner) to be disabled beginning January 1, 2009. *See* Case No. 5:11 CV 2583. The ALJ also concluded, however, that Dunlap was not disabled between years 2006 through 2008 due to substantial gainful employment as a solo practitioner during those years. Even the Commissioner agreed that the ALJ had failed to conduct a proper review of Dunlap’s salary those years without developing the record respecting her business expenses and impairment-related work expenses. *Id.*, Doc #: 17. On March 12, 2013, the Court remanded the case to the ALJ with the following instructions:

[T]he Court REVERSES the Commissioner’s decision to deny Ballard’s application for disability insurance benefits for years 2006 through 2008, REMANDS the case to the ALJ under sentence four of 42 U.S.C. § 405(g), and DIRECTS the ALJ to properly re-evaluate the evidence, including additional evidence, at step one of SSR 83-34 and to proceed through all steps of the disability analysis for years 2006 through 2008 only.

Id., Doc #: 32 at 6 (emphasis added).

Now, over 5 years later, Dunlap has filed the followup appeal challenging the Commissioner’s decision to deny all disability benefits, in contravention of the Court’s March 2013 Order. Due to these exceptional circumstances, the Court directed the Clerk’s Office to check the list of attorneys who are willing to take on civil pro bono cases. As a result of the Clerk’s effort, Attorney Ed Icové has agreed to represent Dunlap pro bono for the limited purpose of representing her in the instant appeal in this district court. Accordingly, the Court **GRANTS** the Motions to Appoint Counsel, **Doc ##: 3 and 13**, and **OVERRULES** Magistrate Judge Parker’s R&R, **Doc #: 14**.

In the intervening time, Magistrate Judge Parker recused himself, and the case was referred to Magistrate Judge David A. Ruiz on August 2, 2019. Doc #: 17. On August 26, 2019, Magistrate Judge Ruiz issued a Report and Recommendation recommending the Court dismiss the case without prejudice due to Dunlap's failure to file a merits brief on or before June 28, 2019. **Doc #: 18.** Now that Dunlap is finally represented by counsel, the Court respectfully **OVERRULES** Magistrate Judge Ruiz's R&R, **Doc #: 18**, and directs him to issue a new schedule for briefing the merits and preparing a Report and Recommended Decision.

IT IS SO ORDERED.

/s/ Dan A. Polster September 6, 2019
Dan Aaron Polster
United States District Judge